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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Casebolt et al.) Atty. Dkt. No.: 003797.00693
Serial Number: 10/788,444) Group Art Unit: 2673
Filed: March 1, 2004) Examiner: TBA
For: DYNAMICALLY ADJUSTING)
OPERATION OF ONE OR MORE)
SENSORS OF A COMPUTER INPUT)
DEVICE)

INFORMATION DISCLOSURE STATEMENT

The Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.56, the attention of the U.S. Patent and Trademark Office is directed to the facts set forth below. Applicants submit this information out of an abundance of caution and so that the Patent and Trademark Office may, in the first instance, determine any materiality thereof to the claimed invention. For the reasons explained below, it is respectfully submitted that the information is not "material" under 37 C.F.R. § 1.56.

1. Less than one year prior to filing the present application, Microsoft Corporation sold computer mice within the United States having the following product names: "Wireless Intellimouse Explorer 2.0" and "Wireless Optical Mouse 2.0" (hereinafter referred to as "subject mice" or "subject mouse").

2. The subject mice use an optical imager that operates at two frame rates during normal operation. When motion of a subject mouse relative to a work surface is above a set speed threshold, the higher of the two frame rates is used. When a subject mouse's motion is below the speed threshold, the lower of the two frame rates is used. If a subject mouse is not in motion after a certain time period, the mouse enters a "sleep" mode and operates at a third frame rate. A subject mouse also operates at other frame rates in sleep mode or if removed from a work surface, but those frame rates are not determined based on motion of the mouse relative to the work surface.

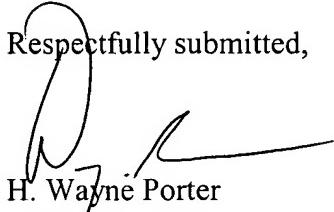
3. Aspects of the subject mice were described in meetings between representatives of Microsoft Corporation and various retail vendors (e.g., Best Buy) prior to March 1, 2003. Although certain battery saving features of the subject mice were described at the meetings, it is not believed that technical details such as imaging rate were discussed. While one or more models of the subject mice were shown during the meetings, the models were not fully functional and did not have the imaging components installed.

4. The meetings were held subject to Non-Disclosure Agreements. Although a purpose of the meetings was to encourage interest on the part of the retail vendors so as to later offer for sale and sell the subject mice to those vendors, no offers for sale of the subject mice were extended. No orders were solicited or accepted at the meetings. Orders for the subject mice were not solicited until seventeen (17) weeks prior to the Microsoft Ship Date (MSD) for the subject mice, which was in September 2003. Orders were not accepted for the subject mice until three (3) weeks prior to MSD.

5. The above-described activities occurring prior to March 1, 2003 do not constitute a sale, offer for sale or public use under 35 U.S.C. § 102(b). Promotional activity not rising to the level of a contractual offer for sale is not a 102(b) event. *See, e.g., Linear Technology Corp. v. Micrel Inc.*, 275 F.3d 1040, 1049 (Fed. Cir. 2001). In particular, "[o]nly an offer which rises to the level of a commercial offer for sale, one which the other party could make into a binding contract by simple acceptance (assuming consideration), constitutes an offer for sale under § 102(b)." *Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F.3d 1041, 1048 (Fed. Cir. 2001). No

oral or written statements were made by Microsoft representatives at the meetings which a vendor could have made into a contract by simple acceptance.

Respectfully submitted,



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